

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF MASSACHUSETTS

FILED

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ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

U.S. DISTRICT COURT
DISTRICT OF MASS.

Plaintiff

Case No.: 05-11693 (RCL)

v.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS, INC.,
d/b/a FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION, FUTURE
MANAGEMENT BUSINESS TRUST,
EDWARD KENNEDY, BRIAN J. CULLINEY,
D.C., and JENNIFER McCONNELL, D.C.,

Defendants.

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ASSENTED TO MOTION OF THE DEFENDANT, EDWARD KENNEDY
TO DISSOLVE EX PARTE ATTACHMENT OF REAL ESTATE AND PERMIT
ESCROW OF PROCEEDS FROM SALE

The Defendant, Edward Kennedy, hereby moves this Court pursuant to Mass. R. Civ. P. 4.1(g) to dissolve the *ex parte* attachment against his one half interest in 13 Kidder Road, Chelmsford, Massachusetts ("the Property") issued by this Court on August 16, 2005 in order to facilitate the sale of said Property currently scheduled for October 17, 2005. Edward Kennedy states that in lieu of this attachment, his net proceeds from the sale of the Property will be held in escrow by Jeffrey J. Phillips, Esquire. In further support of this Motion, Edward Kennedy states:

1. Edward Kennedy and his brother James Kennedy are the sole co-beneficiaries of the 13 Kidder Road Realty Trust, owner of the Property on which the Plaintiff Encompass Insurance Company of Massachusetts ("Encompass") maintains an attachment against Edward Kennedy's fifty percent (50%) beneficial interest.

2. Prior to the filing of the lawsuit in this action, Edward Kennedy and his brother James Kennedy, had negotiated and signed a Purchase and Sale Agreement to sell the Property to an interested third-party purchaser.

3. The anticipated date of the closing on the Property is on or about October 28, 2005.

4. The 13 Kidder Road Realty Trust is expected to realize approximately \$800,000.00 (exclusive of expenses and other administrative costs) from the sale of the 13 Kidder Road Realty Trust.

5. Edward Kennedy's interest in the sales proceeds will be approximately \$400,000.00 (less any fees or closing costs).

6. Accordingly, Edward Kennedy and Encompass have agreed that following the sale of the Property, Edward Kennedy's net proceeds shall be held by Donald Lassman, duly appointed Receiver (hereafter "Receiver") of 13 Kidder Road Realty Trust, First Health Products, Inc., and Robert T. Kennedy, Inc.

7. The Receiver will hold Edward Kennedy's approximate beneficial interest of \$400,000.00 pursuant to the Findings and Order of Approval of Ex Parte Attachment by Trustee Process entered by the Court on August 16, 2005, and the Summons to the Trustee served by Encompass upon Donald Lassman on August 17, 2005.

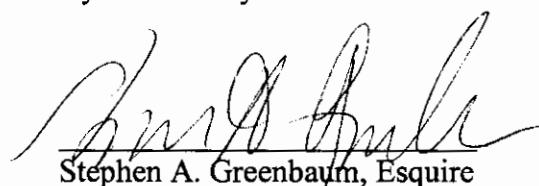
8. The Receiver will hold Edward Kennedy's proceeds until (1) termination of the Receivership appointment at which time the Receiver will transfer said proceeds to Jeffrey Phillips, Esquire, counsel for Edward Kennedy, as escrow agent to hold the funds pending resolution of this litigation; or (2) further Order of this Court.

9. The Plaintiff Encompass herein assents to the allowance of this Motion.

WHEREFORE, Edward Kennedy, with the assent of Encompass, respectfully request that this Court allow this Motion and enter the following Order:

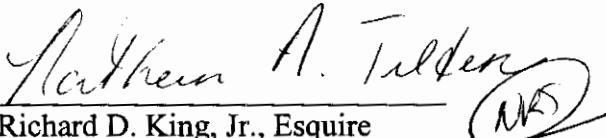
- a. Modify the Ex Parte Real Estate Attachment ordered by the Court on Tuesday August 16, 2005, on any and all real property owned by or in which Kennedy holds an interest up to the amount of \$625,386.00, and the Ex Parte Attachment by Trustee Process up to the amount of \$490,000.00, to \$1,890,000.00;
- b. Dissolve the Attachment with respect only to the real property located at 13 Kidder Road, Chelmsford, Massachusetts ("Kidder Road Property") to facilitate the sale of such property on or about October 24, 2005;
- c. Permit the proceeds of the sale Edward Kennedy's approximate beneficial interest of \$400,000.00 in the Kidder Road Property to be held by Donald Lassman, as Receiver of 13 Kidder Road Realty Trust, First Health Products, Inc., and Robert T. Kennedy, Inc;
- d. The Receiver will hold Edward Kennedy's proceeds until (1) termination of the Receivership appointment at which time the Receiver will transfer said proceeds to Jeffrey Phillips, Esquire, counsel for Edward Kennedy, as escrow agent to hold the funds pending resolution of this litigation; or (2) further Order of this Court.

Respectfully Submitted,
Edward Kennedy
By his attorneys



Stephen A. Greenbaum, Esquire
BBO No. 209360
Natalie R. Sika, Esquire
BBO No. 648408
GREENBAUM, NAGEL
FISHER & HAMELBURG
200 High Street, 4th Floor
Boston, MA 02110
(617) 423-4300

Assented to:
Encompass Insurance Company
By its attorneys

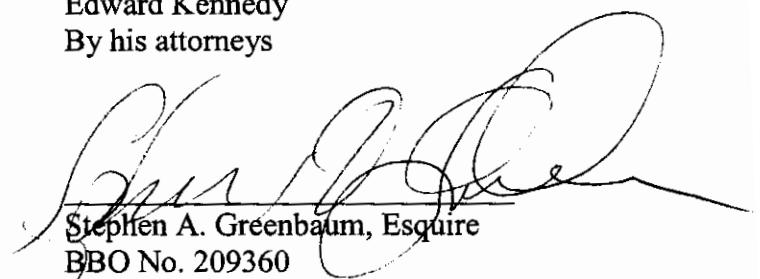
Richard D. King, Jr., Esquire 
BBO # 638142

Nathan A. Tilden, Esquire
BBO # 647076
SMITH & BRINK, P.C.
122 Quincy Shore Drive
Quincy, MA 02171

LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned counsel hereby certify pursuant to Local Rule 7.1(A)(2) that the parties have conferred in good faith and assent to the foregoing Motion.

Edward Kennedy
By his attorneys



Stephen A. Greenbaum, Esquire
BBO No. 209360
Natalie R. Sika, Esquire
BBO No. 448408
GREENBAUM, NAGEL
FISHER & HAMELBURG
200 High Street, 4th Floor
Boston, MA 02110
(617) 423-4300

Dated: October 21, 2005

CERTIFICATE OF SERVICE

I, Stephen A. Greenbaum, Esquire, hereby certify that I have served a copy of the following documents:

1. Proposed Order Dissolving Ex Parte Attachment Real Property at 13 Kidder Road, Chelmsford, MA and Modifying Attachment by Trustee Process of Proceeds Held in the Hands and in Posession of Trustee Donald Lassman; and
2. Assented to Motion of the Defendant, Edward Kennedy to Dissolve Ex Parte Attachment of Real Estate and Permit Escrow of Proceeds From Sale

upon:

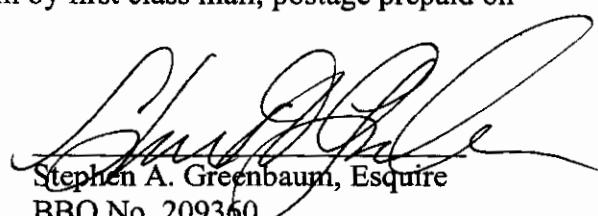
Richard D. King, Jr., Esquire
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Katherine L. Kurtz, Esquire
Matthew J. Conroy, Esquire
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Lexington, MA 02421

Thomas M. Ciampa, Esquire
CIAMPA & ASSOCIATES
33 Mount Vernon Street
Boston, MA 02108

Jeffrey J. Philips
Daniel Treger
PHILIPS & ANGLEY
One Bowdoin Square
Boston, MA 02114

by causing a copy of the same to be mailed to them by first class mail, postage prepaid on this 21st day of October, 2005.



Stephen A. Greenbaum, Esquire
BBO No. 209360
GREENBAUM, NAGEL,
FISHER & HAMELBURG
200 High Street, 4th Floor
Boston, MA 02110
(617) 423-4300

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF MASSACHUSETTS

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EDWARD KENNEDY, BRIAN J. CULLINEY,
D.C., and JENNIFER McCONNELL, D.C.,

Defendants.

X

ORDER DISSOLVING EX PARTE ATTACHMENT OF REAL PROPERTY AT 13
KIDDER ROAD, CHELMSFORD, MA AND MODIFYING ATTACHMENT BY
TRUSTEE PROCESS OF PROCEEDS HELD IN THE HANDS AND IN POSSESSION
OF TRUSTEE DONALD LASSMAN

At the request of the plaintiff Encompass Insurance Company of Massachusetts ("Encompass") and the defendant Edward Kennedy ("Kennedy") it is hereby ORDERED as follows:

1. That the Ex Parte Real Estate Attachment ordered by the Court on Tuesday August 16, 2005, on any and all real property owned by or in which Kennedy holds an interest up to the amount of \$625,386.00, and the Ex Parte Attachment by Trustee Process (Donald Lassman, Receiver of the 13 Kidder Road Realty Trust) up to the amount of \$490,000.00. are hereby MODIFIED to \$1,890,000.00 ("MODIFIED ATTACHMENT")

2. The MODIFIED ATTACHMENT is dissolved with respect only to the real property located at 13 Kidder Road, Chelmsford, Massachusetts ("Kidder Road Property") to facilitate the sale of such property on or about October 28, 2005;

3. The Kidder Road Property is owned by the 13 Kidder Road Realty Trust.
4. Edward Kennedy, and his brother, James Kennedy are the sole beneficiaries of the 13 Kidder Road Realty Trust;
5. Edward Kennedy holds a fifty percent (50%) beneficial interest in the 13 Kidder Road Realty Trust;
6. The Kidder Road Realty Trust will realize approximately \$800,000.00, (exclusive of expenses and other administrative costs) from the sale of the Kidder Road Realty Trust;
7. Accordingly, Edward Kennedy's interest in the sales proceeds will be approximately \$400,000.00 (less any fees or closing costs);
8. The proceeds of the sale of the Kidder Road Property will be held by Donald Lassman, duly appointed Receiver (hereafter "Receiver") of 13 Kidder Road Realty Trust, First Health Products, Inc., and Robert T. Kennedy, Inc.
9. The Receiver will hold Edward Kennedy's approximate beneficial interest of \$409,080.00 pursuant to the Findings and Order of Approval of Ex Parte Attachment by Trustee Process entered by the Court on August 16, 2005, and the Summons to the Trustee served by Encompass upon Donald Lassman on August 17, 2005.
10. The Receiver will hold Edward Kennedy's proceeds until (1) termination of the Receivership appointment at which time the Receiver will transfer said proceeds to Jeffrey Phillips, Esquire, counsel for Edward Kennedy, as escrow agent to hold the funds pending resolution of this litigation; or (2) further Order of this Court

BY THE COURT,

UNITED STATES DISTRICT JUDGE

DATED: OCTOBER _____, 2005